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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,707	02/26/2002	Gregory G. Brucker	15305.32USU1	1518

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CROMPTON, SEAGER & TUFTE, LLC
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EXAMINER

TYSON, MELANIE RUANO

ART UNIT	PAPER NUMBER
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3773

MAIL DATE	DELIVERY MODE
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10/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/083,707

Applicant(s)

BRUCKER ET AL.

Examiner

Melanie Tyson

Art Unit

3773

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/ (Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773

/Melanie Tyson/
Examiner, Art Unit 3773

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments are not persuasive. Regarding the 112 rejection, the applicant argues that at the time the application was filed, the applicant disclosed the limitation "after expansion of the bulge portion a portion of the bulge portion is positioned within the circumferential plane." It is the examiner's position that the applicant disclosed the entire bulge portion extends radially through the side opening outside the circumferential plane after expansion. Therefore, this limitation is considered new matter. Regarding claims 17, 57, and 61, the applicant argues that neither Lam nor Vardi teaches a "single catheter having a balloon" and "in the expanded condition a portion of the plurality of movable members being extended radially outward from the stent wall to form a scaffold, the scaffold defining a side opening in the stent wall." However, Lam discloses a single catheter comprising a single balloon for expanding a plurality of movable members on a stent (for example, see Figure 1) and Vardi teaches forming the plurality of radially expandable members on a side opening in the stent wall (for example, see Figure 8). As recited in the previous office action, it is the examiner's position that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Lam's expandable members on a side wall as taught by Vardi in order to provide a stent with the ability to be positioned across a bifurcation. Applicant further argues that Lam and Vardi fail to teach or suggest a technique for expanding expandable members positioned on a side opening. It is the examiner's position that Lam's single catheter having a single balloon comprises all the structural limitations as claimed, thus is capable of expanding expandable members positioned on a side opening as taught by Vardi. It is noted that the "known technique" stated in the previous office action refers to the technique of providing expandable members on a side opening, as opposed to the ends, of a stent. Regarding claims 47 and 62, the applicant argues that Marotta fails to teach or suggest a balloon arrangement including a bulge portion configured to protrude radially outward from the body portion when expanded to expand the movable members of the bifurcated stent to a position extending radially outward from the stent wall to define a side opening in a stent. However, Marotta teaches a balloon arrangement comprising a bulge portion positioned within the circumferential plane of the body region of an endoprosthesis prior to expansion (for example, see Figure 1) and positioned radially through a side opening of the endoprosthesis outside the circumferential plane after expansion in order to push a movable member outward. Therefore, it is the examiner's position that Marotta's balloon arrangement is capable of expanding expandable members positioned on a side wall as disclosed by Vardi. As recited in the previous office action, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Vardi's balloon to have a bulge region as taught by Marotta to push the movable members outward. Doing so would eliminate the step of repositioning a balloon or having to use a second balloon, thus facilitating the deployment and proper placement of the stent.